the same pursuit justifies a discrimination in license taxes. *Slaughter* v. *Com.* (Va. 1856), 53 Gratt. 776. The fact that corporations having property within the state are subject to ordinary taxes on property, while those having their property outside of the state cannot be so taxed, seems to be such a difference in condition as would allow the particular classification for taxation.

EVIDENCE—PHYSICAL EXAMINATION OF PLAINTIFF IN PERSONAL INJURY SUIT.—Plaintiff sued for personal injuries. Defendant demanded an order for a physical personal examination of the plaintiff. The order was granted, and physicians were appointed by the court for the purpose of making the examination. Before the examination had been made, the defense withdrew its request. The court, however, against the objection of both parties, proceeded on its own motion to cause the examination to be made and the physicians to testify. *Held*, the trial court exceeded its power. *South Covington St. Ry. Co.* v. *Stroh*, (Ky.), 66 S. W. Rep. 178.

In Kentucky the right of the defendant to compel the plaintiff in a personal injury suit to submit to an examination of his injuries, has been sustained; *Belt Electric Line Co.* v. *Allen*, 102 Ky. 551, 44 S. W. Rep. 89. And this is the rule in the Southern and Western states generally, wherever the question has arisen. To the contrary: N. Y. (before a statute providing differently), U. S., Ill., Ind., and possibly Del. and Tex. The right of the court itself, however, to compel such examination against the wishes of both parties seems not to have arisen before in Kentucky or in any other state.

INSURANCE—CONSTRUCTION OF TERMS OF INDEMNITY POLICY.—A policy of insurance provided "against loss from liability to every person who may . . . accidentally sustain bodily injuries while traveling on the road of the insured, under circumstances which shall impose upon the insured a common law or statutory liability." The question before the court was, whether the terms of this policy were "broad enough to cover the case where the person who is a traveler on plaintiff's road dies instantly and without conscious suffering in consequence of an accident for which the plaintiff is responsible." *Held*, that the terms of the policy were not broad enough to cover such a case, because, by the terms of the policy, "the liability is to a person who sustains bodily injuries, and such person must have a right of action therefor." *Worcester St. Ry. Co.* v. *Travelers' Ins. Co.*, (Mass. 1902) 62 N. E. Rep. 364.

There are two classes of statutes imposing liability for death caused by wrongful act. One of these classes continues the action which the person injured, had he lived, could have maintained, and does not create a new right of action. *McCubbin* v. *Hastings*, 8, 27 La. An. 713; *Read* v. *Great Eastern Ry. Co.*, L. R, 3 Q. B. 555. Under a statute of this kind it has been repeatedly held that if death was instantaneous, the deceased had no right of action and consequently none could survive. *Kearney* v. *Boston & Worcester Ry. Co.*, 9 Cush. 108; *Morgan* v. *Hollings*, 125 Mass, 93; *Mulchahey* v. *Washburn Car Wheel Co.*, 145 Mass. 281. The other class of statutes creates an entirely new right of action. *Hagan* v. *Kean*, 3 Dillon, 124; *James* v. *Christy*, 18 Mo. 162. Under a statute of the latter class recovery may be had, although there was instantaneous death without conscious suffering. *Mulhall* v. *Fallon*, 176 Mass. 266. The liability imposed in this case was not in continuation of any right ot action the deceased had. The deceased had no right of action. By the terms of the policy indemnity was given against loss from liability to the person injured, There was no liability to the person injured in this case, death being instantaneous. Therefore, this case is correctly decided.

INSURANCE—AGREEMENT TO ISSUE NEW POLICY—EFFECT OF FAILURE TO SURENDER OLD POLICY AND MAKE DEMAND WITHIN TIME STIPULATED.—A policy of insurance provided that in case the policy should lapse by reason of non-payment of premium, the holder thereof should be entitled, upon surrendering the original policy and making demand within six months after such lapse, to a paid-up nonparticipating policy. There was a failure to surrender the old policy and make demand for a new one within the time stipulated. Held, that insured did not forfeit his right to a paid-up policy by a failure to surrender the original policy and make demand within the six months, because time was not of the essence of the contract. *Washington Life Ins. Co.* v. *Myles* (Ky. 1902) 66 S. W. Rep. 740.

Under a like state of facts the court of appeals of Indiana holds that the surrender of the old policy and the making of demand within the six months is a condition precedent to the right to a paid-up policy. and a failure to comply with this condition amounts to a forfeiture of the right to a new policy. *Wells* v. *Vermont Life Ins. Co.* (Ind. 1902), 62 N. E. 501.